Inpt77-06

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Insolvency petition no. 77 OF 2006

AKSHAY NAVNEETLAL PARIKH .. Petitioning creditor
V/S
NILESH SHAH ... Judgment Debtor

Mr. Jayant Gaikwad i/b.
AJAY KHANDHAR AND CO. for petitioning creditor
Mr. Piyush Shah i/b. MR. MAYUR NARENDRA & CO., for Judgment Debtor

CORAM: **D.G. KARNIK J**.

DATE: February, 20, 2007

P.C.:

1. Heard learned counsel for the parties.
2. A decree was passed by this court against the judgment debtor on 19th January 2005 in Summary Suit No. 3523 of 2001. As the judgment debtor failed to pay the decreetal amount the petitioning creditor served an insolvency notice No. N/ 122/2005 on the judgment debtor. Notice of Motion No. 184 of 2005 taken out by the judgment debtor for setting aside the insolvency notice was dismissed by this court by order dated 26th April 2006. Despite the dismissal of

the notice of motion the judgment debtor has not paid the decreetal dues to the petitioning creditor. The judgment debtor has committed an act of insolvency on 26th April 2006 when the notice of motion for setting aside the insolvency notice was dismissed and he failed to pay the money thereafter. In the affidavit in reply the judgment debtor contends that the decree has not been validly passed against him. The insolvency court cannot go behind the decree. Even in the notice of motion this defence was not taken. In the circumstances there is no merit in the defence. The petition is therefore made absolute in terms of prayer clause (a).

(D.G. KARNIK J.)